

1 AMERICAN CIVIL LIBERTIES UNION
2 FOUNDATION OF NORTHERN CALIFORNIA
3 WILLIAM S. FREEMAN (SBN 82002)
4 SEAN RIORDAN (SBN 255752)
5 39 Drumm Street
6 San Francisco, CA 94111
7 Telephone: (415) 621-2493
8 Facsimile: (415) 255-8437
9 Email: wfreeman@aclunc.org
10 sriordan@aclunc.org

11 ACLU FOUNDATION
12 IMMIGRANTS' RIGHTS PROJECT
13 STEPHEN B. KANG (SBN 292280)
14 39 Drumm Street
15 San Francisco, CA 94111
16 Telephone: (415) 343-0770
17 Facsimile: (212) 395-0950
18 E-mail: skang@aclu.org

19 COOLEY LLP
20 MARTIN S. SCHENKER (SBN 109828)
21 ASHLEY K. CORKERY (SBN 301380)
22 EVAN G. SLOVAK (SBN 319409)
23 101 California Street, 5th Floor
24 San Francisco, CA 94111
25 Telephone: (415) 693-2000
26 Facsimile: (415) 693-2222
27 Email: mschenker@cooley.com
28 acorkery@cooley.com
eslovak@cooley.com

1 NEW YORK CIVIL LIBERTIES UNION
2 FOUNDATION
3 CHRISTOPHER DUNN
4 AMY BELSHER
5 JESSICA PERRY
6 125 Broad Street, 19th Floor
7 New York, NY 10004
8 Telephone: (212) 607-3300
9 Facsimile: (212) 607-3318
10 Email: dcunn@nyclu.org
abelser@nyclu.org
jperry@nyclu.org

11 LAW OFFICES OF HOLLY S. COOPER
12 HOLLY S. COOPER (SBN 197626)
13 P.O. Box 4358
14 Davis, CA 95617
15 Telephone: (530) 574-8200
16 Facsimile: (530) 752-0822
17 Email: hscooper@ucdavis.edu

18 Attorneys for Plaintiff

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

22 Ilsa Saravia, as next friend for A.H., a
minor, and on behalf of herself individually
and others similarly situated,

23 Case No. 3:17-cv-03615-VC

24 Honorable Vince Chhabria

25 **[PROPOSED] ORDER GRANTING
26 PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
PROPOSED CLASS SETTLEMENT**

Plaintiff,

v.

William Barr, Attorney General, et al.,

Defendants.

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2 Plaintiff Ilsa Saravia has filed a Motion for Preliminary Approval of the class action
3 settlement reached with Defendant William Barr (“Government”), a hearing on which was held on
4 October 15, 2020. The Court has carefully considered the Settlement Agreement together with all
5 exhibits thereto, all the filings related to the Settlement, the arguments of counsel, and the record in
6 this case. The Court hereby gives its preliminary approval of the Settlement; finds that the
7 Settlement and Settlement Agreement are sufficiently fair, reasonable and adequate to allow
8 dissemination of notice of the Settlement to the Settlement Class and to hold a Fairness Hearing;
9 orders the Class Notice be sent to the Settlement Class in accordance with the Settlement Agreement
10 and this Order; and schedules a Fairness Hearing to determine whether the proposed Settlement is
11 fair, adequate and reasonable.

12 **IT IS HEREBY ORDERED THAT:**

13 1. The Settlement Agreement is hereby incorporated by reference in this Order, and all
14 terms or phrases used in this Order shall have the same meaning as in the Settlement Agreement.

15 2. The Court preliminarily approves the Settlement and Settlement Agreement, finding
16 that the terms of the Agreement are fair, reasonable, and adequate, and within the range of possible
17 approval and sufficient to warrant providing notice to the Settlement Class.

18 3. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2), and (e), the Court certifies, for
19 settlement purposes only, the following Settlement Classes comprised of Unaccompanied minors
20 who were detailed by the Government, released by the Office of Refugee Resettlement (“ORR”)
21 to a parent or sponsor (“Sponsored UCs”), and subsequently rearrested and detained by the
22 Government on allegations of gang affiliation:

23 a. “[A]ll noncitizen minors meeting the following criteria: (1) the noncitizen
24 minor came to the United States as an unaccompanied minor; (2) the
25 noncitizen minor was previously detained in ORR custody and then
26 released by ORR to a sponsor; and (3) the noncitizen minor has been or will
27 be rearrested by DHS on the basis of a removability warrant based in whole

1 or in part on allegations of gang affiliation. This class expressly excludes
 2 arrests of noncitizen minors who already are subject to final orders of
 3 removal.

4. The Court finds, for settlement purposes only, that the Action may be maintained
 5 as a class action on behalf of the Settlement Class because:

- 6 a. Numerosity: Class Counsel estimates that over forty children have received
 7 *Saravia* hearings and many others have benefitted from the deterrent effect
 8 of the hearings. This satisfies the Rule 23(a)(1) numerosity requirement.
- 9 b. Commonality: The threshold for commonality under Rule 23(a)(2) is not high
 10 and a single common issue will suffice. Plaintiff alleges, among other things,
 11 that the Claims 1-3 Settlement Class raises a common question of whether
 12 the Government violates the Fifth Amendment's Due Process Clause and
 13 other applicable federal laws when it seeks to rearrest Sponsored UCs based
 14 in whole or in part on allegations of gang affiliation. Similarly, the Claim 4
 15 Subclass turned on whether the Government uniformly applied government
 16 policies to all Class Members. These issues are common to the Settlement
 17 Class.
- 18 c. Typicality. All class members are at risk of the same injury and the action
 19 is not based on conduct unique to the named Plaintiff. Therefore
 20 Plaintiff's claims are typical of the claims of the Settlement Class
 21 Members and satisfy Rule 23(a)(3).
- 22 d. Adequacy: There are no conflicts of interest between Plaintiff and Settlement
 23 Class members and Plaintiff has retained competent counsel to represent the
 24 Settlement Class. Class Counsel regularly engage in complex litigation
 25 similar to the present case and have dedicated substantial resources to the
 26 prosecution of this matter. The adequacy requirement is satisfied.
- 27 e. Predominance and Superiority: There is predominance and superiority. A
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1 class action is superior to other available methods for the fair and efficient
 2 adjudication of this controversy. The common legal and factual issue listed
 3 in the preliminary approval papers predominate over all other issues.
 4 Resolution of the common question constitutes a significant part of Plaintiff's
 5 and Settlement Class Members' claims.

6 5. The Court appoints as class representatives, for settlement purposes only, Plaintiff
 7 Ilsa Saravia. The Court finds, for settlement purposes only, that Plaintiff will adequately represent
 8 the Settlement Class.

9 6. Pursuant to Federal Rule of Civil Procedure 23(g), and for settlement purposes only,
 10 the Court designates as Class Counsel the law firm of Cooley LLP. The Court preliminarily finds
 11 that, based on the work Class Counsel have done identifying, investigating, and prosecuting the
 12 claims in this action; Class Counsel's experience in handling class actions and claims of this type
 13 asserted in this Action; Class counsel's knowledge of the applicable law; and the resources Class
 14 Counsel have and will commit to representing the class, that Class Counsel have represented and
 15 will represent the interests of the Settlement Class fairly and adequately.

16 7. The Court finds that the proposed Class Notice and the proposed plan of
 17 distribution of the Class Notice meets the requirements of Federal Rule of Civil Procedure
 18 23(c)(2)(B), and hereby directs Plaintiff to proceed with the notice distribution in accordance with
 19 the terms of the Agreement.

20 8. Any Settlement Class Members who wishes to opt out from the Agreement must
 21 do so within 60 days of the Mailed Notice Date and in accordance with the terms of the Agreement.

22 9. Any Settlement Class Members who wishes to object to the Agreement must do so
 23 within 60 days of the Mailed Notice Date and in accordance with the terms of the Agreement.

24 10. The Court finds that the Notice plan, including the form, content, and method of
 25 dissemination of the Class Notice to Settlement Class Members as described in the Settlement
 26 Agreement, (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances,
 27 to apprise Settlement Class Members of the pendency of the lawsuit and the Settlement and of
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1 their right to object to or exclude themselves from the proposed Settlement;

2 (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled
 3 to receive notice; and (iv) meets all applicable requirements of Federal Rule of Civil Procedure 23
 4 and due process.

5 11. The Court approves the procedures set forth in the Settlement Agreement and the
 6 Notice of Settlement of Class Action for exclusions from and objections to the Settlement.

7 12. The Court directs that a hearing be scheduled on _____, 2020 at
 8 _____ a.m./p.m. (the “Fairness Hearing”) to assist the Court in determining whether the
 9 Settlement is fair, reasonable and adequate; whether Final Judgment should be entered dismissing
 10 with prejudice Defendants in the above-captioned action. Plaintiff shall file a motion for final
 11 approval of the Settlement no later than 14 days before the Fairness Hearing.

12 13. Plaintiff may file motions for attorneys’ fees and costs and has represented that
 13 the parties intend to negotiate fees and costs without the need for motion practice. Should motion
 14 practice prove necessary, Plaintiff’s motion for fees and costs shall be filed at a date and time
 15 consistent with the deadlines set forth in the Equal Access to Justice Act. *See* 28 U.S.C. § 2412(d).

16 14. Neither the Settlement, nor any exhibit, document or instrument delivered
 17 thereunder shall be construed as or deemed to be evidence of an admission or concession by
 18 Defendants of an interpretation of, any liability or wrongdoing by Defendants, or of the truth of
 19 any allegations asserted by Plaintiff, Settlement Class Members or any other person.

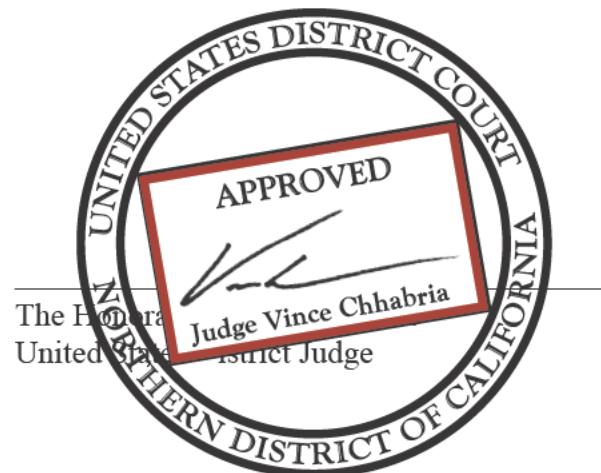
20 15. If the Settlement is not finally approved, or the Effective Date does not occur, or the
 21 Settlement is terminated under its terms, then (a) all parties will proceed as if the Settlement (except
 22 those provisions that, by their terms, expressly survive disapproval or termination of the
 23 Settlement) had not been executed and the related orders and judgment had not been entered,
 24 preserving in that event all of their respective claims and defenses in the action; and (b) all releases
 25 given will be null and void. In such an event, this Court’s orders regarding the Settlement, including
 26 this Preliminary Approval Order, shall not be used or referred to in litigation for any purpose.
 27 Nothing in the foregoing paragraph is intended to alter the terms of the Settlement Agreement with
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1 respect to the effect of the Settlement Agreement if it is not approved.

2 16. Plaintiff's Motion for Preliminary Approval of Proposed Class Settlement
3 ("Motion") is hereby GRANTED. The Court hereby preliminarily approves the proposed class-
4 wide injunctive relief settlement set forth in the Settlement Agreement (attached to Plaintiff's
5 Motion), hereby certifies the proposed class of immigrant minors described in the Settlement
6 Agreement for settlement purposes, hereby approves the proposed form and plan of notice
7 (attached to Plaintiff's Motion), and hereby schedules a final fairness hearing for January 14,
8 2021 at 10:00 am.

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10 **IT IS SO ORDERED.**

11 Date: October 15, 2020



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